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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/633,476	08/07/2000	Mark C. Terranova	5181-60700	4639

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EXAMINER

BRUCKART, BENJAMIN R

ART UNIT	PAPER NUMBER
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2155

DATE MAILED: 11/17/2003

8

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/633,476

Applicant(s)

TERRANOVA ET AL.

Examiner

Benjamin R Bruckart

Art Unit

2155

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 October 2003.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All   b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **Detailed Action**

#### **Status of Claims:**

Claims 1-24 are pending in this Office Action.

Claims 1, 2, 4, 7, 8, 10, and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,154,744 by Kenner et al.

Claims 3, 9, 11, 12, and 13 are rejected under 35 U. S. C. 103(a) which forms the basis for all obvious as being unpatentable over U.S. Patent No. 6,154,744 by Kenner et al in view of U.S. Patent No. 6,560,648 by Dunn et al.

Claims 15, 16, 18, 21, and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,154,744 by Kenner et al.

Claims 17, 22 and 23 are rejected under 35 U. S. C. 103(a) which forms the basis for all obvious as being unpatentable over U.S. Patent No. 6,154,744 by Kenner et al in view of U.S. Patent No. 6,560,648 by Dunn et al.

Claim 19 is rejected under 35 U. S. C. 103(a) as being obvious by U.S. Patent No. 6,154,744 by Kenner et al in view of U.S. Patent No. 5,485,606 by Midgdey et al.

Claim 20 is rejected under 35 U. S. C. 103(a) as being obvious by U.S. Patent No. 6,154,744 by Kenner et al in view of U.S. Patent No. 5,485,606 by Midgdey et al in further view of U. S. Patent No. 6,138,112 by Slutz.

Applicant's amended claim 1 overcomes the 35 U.S.C. 112, second paragraph, as being indefinite rejection. Amended claim 1 is accepted.

### **Response to Arguments**

Applicant's arguments filed in the amendment filed October 29, 2003, Paper No. 7, have been fully considered but they are not persuasive. The reasons are set forth below.

#### **Applicant's invention as claimed:**

Claims 1, 2, 4, 7, 8, 10, and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,154,744 by Kenner et al.

With regards to claim 1, a system comprising: a server (col. 5, lines 44-50); a first client coupled to said server (col. 5, lines 44-50); wherein said server is configured to login a first user and a second user (col. 9, lines 40-45), wherein said first client is configured to execute a first instance of a test program by said first user and a second instance of said test program by said second user substantially concurrently (col. 7, lines 3-6), wherein said first instance of said test program is configured to cause a first access to a first file on said server, wherein said second instance of said test program is configured to cause a second access to a second file on said server (col. 5, line 23), wherein said first client is configured to store a first latency value associated with said first access, wherein said first client is configured to store a second latency value associated with said second access (col. 11, lines 15-23).

With regards to claim 2, a system related to claim 1, wherein said server is configured to verify that said first user has permission to access said first file in response to said first access (col. 9, 40-44).

With regards to claim 4, a system related to claim 1, wherein said first user corresponds to a first user type, and wherein said second user corresponds to a second user type (col. 16, 62-67; col. 17, lines 1-5).

With regards to claim 7, the system related to claim 1, further comprising a second client coupled to said server; wherein said server is configured to login a third user, wherein said second client is configured to execute a third instance of said test program by said third user substantially concurrently with initiating said first instance of said second instance (col. 5, 23; col. 7, lines 3-6), wherein said third instance of said test program is configured to cause a third access to a third file on said server, and wherein said second client is configured to store a third latency value associated with said third access (col. 11, lines 15-23).

With regards to claim 8, the system related to claim 7, wherein said server is configured to verify that said third user has permission to access said third file (col. 9, lines 40-44).

With regards to claim 10, the system related to claim 1, wherein said server is configured to login said first user using a first operating system protocol, and wherein said server is configured to login said second user using a second operating system protocol (col. 8, lines 5-10).

With regards to claim 14, the system related to claim 1, wherein said first access comprises a first read access or a first write access, and wherein second access comprises a second read access or a second write access (col. 3, 28-33).

The examiner finds the claims 1, 15; 2, 16; 4, 18; 10, 21; 14, 24 to be synonymous in intention. While the examiner recognizes the distinction between a system and a method, the examiner relates these to the code, the functions, and medium for which the code works. Therefore claims 15, 16, 18, 21, 24 are also rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,154,744 by Kenner et al.

Claims 3, 9, 11, 12, and 13 are rejected under 35 U. S. C. 103(a) which forms the basis for all obvious as being unpatentable over U.S. Patent No. 6,154,744 by Kenner et al in view of U.S. Patent No. 6,560,648 by Dunn et al.

The Kenner reference discloses a set of programs run within the configuration utility to determine the latency of the network. The Kenner reference indicates ping and trace-route programs are used in this manner but does not clearly state how the data is processed to produce results.

The Dunn reference discloses that using a ping command could approximate a total time for a token message to travel round-trip across the network (Dunn: col. 1, lines 38-46).

The Dunn reference further teaches that ping commands are high priority, small size messages that travel quickly through routers (Dunn: col. 2, lines 6-8) allowing to measure message communication latency across a network (Dunn: col. 2, lines 49, 50).

Therefore it would have been obvious to a person of ordinary skill in the art at the time the invention was made to implement the system taught by Kenner with specific uses of the PING command as taught by Dunn to measure the network latency.

Claims 3, 9, 11, 12 and 13 are rejected under the same rationale given above. In the rejections set forth, the examiner will address the additional limitations and point to the relevant teachings of Kenner et al and Dunn et al.

With regards to claim 3, a system related to claim 2, wherein said first latency value represents a first time portion corresponding to said first access and a second time portion corresponding to said server verifying said first user has permission to access said first file (Dunn: col. 1, lines 38-46).

With regards to claim 9, the system of claim 8, wherein said third latency value represents a first time portion corresponding to said third access and a second time portion corresponding to said server verifying said third user has permission to access a third file (Dunn: col. 1, lines 38-46).

With regards to claim 11, the system related to claim 1, wherein said server is configured to convey a first token to said first client in response to logging in said first user, and wherein said server is configured to convey a second token to said first client in response to logging in said second user (Dunn: col. 1, lines 52-56).

With regards to claim 12, the system related to claim 11, wherein said server is configured to verify that said first user has permission to access said first file in response to said first access using said first token, and wherein said server is configured to verify that said second user has permission to access said second file in response to said second access using said second token (Dunn: col. 1, lines 52-56).

With regards to claim 13, a system related to claim 1, wherein said first instance of said test program is configured to cause a third access to a third file on said server, wherein said second instance of said test program is configured to cause a fourth access to a fourth file on said server, wherein said first client is configured to store a third latency value associated with said third access, and wherein said second client is configured to store a fourth latency value associated with said fourth access (Dunn: col. 1, lines 38-46).

Claim 5 is are rejected under 35 U. S. C. 103(a) which forms the basis for all obvious as being unpatentable over U.S. Patent No. 6,154,744 by Kenner et al in view of U.S. Patent No. 5,485,606 by Midgdey et al.

The Kenner reference discloses a system of network latency tests that will test connectivity and load of a server and verify a user, then allow access to a file. The Kenner reference does not explicitly explain file manipulation or directory access for a user.

Midgdey reference teaches a system related to claim 4 (Midgdey: abstract), wherein server is configured to create a first directory for said first user (Midgdey: col. 7, lines 27-39), wherein said server is configured to populate said first directory with a first plurality of files according to said first user type, wherein said first plurality of files includes said first file (Midgdey: col. 9, line 62 – col. 10, line 12), wherein server is configured to create a second directory for said second user (Midgdey: col. 7, lines 27-39), wherein said server is configured to populate said second directory with a second plurality of files according to said second user type, and wherein said second plurality of files includes said second file (Midgdey: col. 9, line 62 – col. 10, line 12).

The Midgdey reference further teaches that this method of file backup and restoration is usable with any operating system (Midgdey: col. 2, lines 7-11).

Therefore it would have been obvious to a person of ordinary skill in the art at the time the invention was made to implement the system taught by Kenner with directory creation and file population techniques as taught by Dunn to create test directories that can be restore on any operating system to be test.

Claim 6 is are rejected under 35 U. S. C. 103(a) which forms the basis for all obvious as being unpatentable over U.S. Patent No. 6,154,744 by Kenner et al in view of U.S. Patent No. 5,485,606 by Midgdey et al in further view of U. S. Patent No. 6,138,112 by Slutz.

The Kenner reference discloses a system of network latency tests that will test connectivity and load of a server and verify a user, then allow access to a file. The Kenner reference does not explicitly explain file manipulation or directory access for a user. The Midgdey reference explains a system independent of operating system for backing up and restoring directory and file information. The Midgdey reference does not explicitly state a random sorting method in which the files may be copied into a directory can be ordered.

The Slutz reference describes a dynamic testing method for databases based upon a seed given seed value.

With regards to claim 6, the system of claim 5, wherein said first instance of said test program is configured to identify each of said first plurality of files in said first directory, wherein said first instance of said test program is configured to create a first order of said first plurality of files using a first seed value (Slutz: col. 4, lines 55-57), wherein said second instance of said test program is configured to identify each of said second plurality of files in said second directory, and wherein said second instance of said test program is configured to create a second order of said second plurality of files using a second seed value (Slutz: col. 4, lines 55-57).

Slutz further teaches that it can be used like a random number generator, similar to a sequence generator, so that the same configuration settings, the same schema, and same starting seed will reproduce it (Slutz: col. 4, lines 62-67).

Therefore if would have been obvious to a person of ordinary skill in the art at the time the invention was made to implement the system taught by Kenner and Midgdey with random number or sequence generation based upon start seed values as taught by Slutz is great random sequences for testing that can be reproduced.

The examiner finds the claims 3, 17; 5, 19; 6, 20; 11, 22; 12, 23 to be synonymous in intention. While the examiner recognizes the distinction between a system and a method, the examiner relates these to the code, the functions, and medium for which the code works.

Therefore claims 17, 22 and 23 are rejected under 35 U. S. C. 103(a) which forms the basis for all obvious as being unpatentable over U.S. Patent No. 6,154,744 by Kenner et al in view of U.S. Patent No. 6,560,648 by Dunn et al.

Claim 19 is rejected under 35 U. S. C. 103(a) as being anticipated by U.S. Patent No. 6,154,744 by Kenner et al in view of U.S. Patent No. 5,485,606 by Midgdey et al.

Claim 20 is rejected under 35 U. S. C. 103(a) as being anticipated by U.S. Patent No. 6,154,744 by Kenner et al in view of U.S. Patent No. 5,485,606 by Midgdey et al in further view of U. S. Patent No. 6,138,112 by Slutz.

**The Applicant Argues:**

Applicant can find no language in Kenner that teaches or suggests a system “wherein said first client is configured to execute a first instance of a test program by said first user and a second instance of said test program by said second user substantially concurrently” or “wherein said first instance of said test program is configured to cause a first access to a first file on said server, wherein said second instance of said test program is configured to cause a second access to a second file on said server,” as recited in amended claim 1.

**In response**, the examiner respectfully submits:

Addressing the limitation “client server,” the Kenner reference teaches a client – server relationship where the client is coupled to the server through the “configuration utility” (Kenner: col. 9, line 40).

Addressing the limitation of user login, “The configuration utility then queries the user for various items, ..., password, ...” (Kenner: col. 9, lines 40-45). Login requirements usually require protected data like passwords.

Addressing the limitation of a “second user,” a second user is logged in concurrently through the same configuration utility (Kenner: col. 7, lines 3-6; Figure 1).

Addressing the limitation of “accessing files,” both first and second users of test programs access their respective files in both short and long file downloads (Kenner: col. 11, lines 32-43).

Addressing the limitation of a “latency value,” the latency data is determined from tests (Kenner: col. 9, lines 58 – col. 11, line 49). The ping test determines connectivity but also returns a time value regarding the life of the packet.



Accordingly, these form the basis of the rejection for the following dependent claims 2-14 that are not patentably distinguishable over the relevant references cited.

***Prior Art***

U. S. Patent Pub No. 2002/0147969 issued to Lethin et al.

U. S. Patent No. 6,321,264 issued to Fletcher et al.

U. S. Patent No. 5,355,497 issued to Leon Cohen- Levy.

U. S. Patent No. 6,269,401 B1 issued to Fletcher et al.

U. S. Patent Pub No. 2002/0026321 A1 issued to Faris et al.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benjamin R Bruckart whose telephone number is (703) 305-0324. The examiner can normally be reached on 8:00-5:30PM with every other Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hosain Alam can be reached on (703) 308-6662. The fax phone number for the organization where this application or proceeding is assigned is (703) 746-7239.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-0324.

Benjamin R Bruckart  
Examiner  
Art Unit 2155

brb *BRB*  
Nov. 13, 2003

*Hosain Alam*  
**HOSAIN ALAM**  
**SUPERVISORY PATENT EXAMINER**